IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 479

NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.
and
ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC.
Appellants

v.

UNITED STATES OF AMERICA
and
INTERSTATE COMMERCE COMMISSION
Appellees

On Appeal from the United States District Court for the District of Columbia

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PETITION FOR REHEARING OR FOR CLARIFICATION OF ORDER

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States

Come now Appellants and, pursuant to Rule 58 of the Rules of this Court, file this petition for rehearing or clarification of the decision rendered December 17, 1962 affirming a judgment of the United States District Court for the District of Columbia which dismissed Appellants' suit to set aside orders of the In-

terstate Commerce Commission. In support of this petition Appellants say as follows:

This case presents two distinct and wholly unrelated questions. First, do Appellants have standing to seek judicial review of the challenged orders of the Interstate Commerce Commission? Second, may a freight forwarder as defined by Section 402(a)(5) of the Interstate Commerce Act lawfully hold itself out to the public to perform and in fact perform in the usual and ordinary course of its business a lesser and different service than it is authorized to perform pursuant to its permit issued by the Commission? The District Court answered the first question no and the second question yes.

The United States and the Interstate Commerce Commission recognized in their motion to affirm that the question whether orders of the Commission may be judicially reviewed in a suit brought by an association of carriers who are adversely affected and aggrieved thereby is one of first impression in this Court (Motion to Affirm, P. 7). Indeed, it is one that, to the best of our knowledge, has never been considered by any federal court except the District Court in this case. It is certainly a question of vital and general significance, the clear answer to which by this Court is necessary to the proper exercise by the various district courts of their important jurisdiction to review orders of the Commission.

Rule 16 of this Court provides that it "will receive a motion to affirm the judgment sought to be reviewed on appeal from a federal court on the ground that it is manifest that the questions on which the decision of the cause depends are so insubstantial as not to need further argument." We submit that the first

question upon which the decision of the District Court depends clearly does not fall within this language. It is not only a substantial question, but a difficult one. Indeed, the District Court referred to "contrasting studies which depict the complexity of problems of standing" and addressed itself to the second question presented because of "the importance of the case" and in recognition of the possibility that "we are in error on the issue of standing. . . ." (Appendix to Jurisdictional Statement, P. 4a).

The second question upon which the decision of the District Court depends, which for clarity of discussion was divided into two questions in Appellants' Jurisdictional Statement, is also substantial. Indeed, it goes to the heart of the scheme of regulation of interstate transportation embodied in the Interstate Commerce Act. Specifically, that question is whether freight forwarders may, *in the ordinary and usual course of their business*, render service which does not include assembly or consolidation or break-bulk or distribution, and is, therefore, for all practical purposes identical with the service rendered by common carriers by motor. A clear and authoritative answer to this question is necessary in order to delineate the role of freight forwarders in the national system of transportation, and to fix the limits of the scope of their operations within the meaning of Part IV of the Interstate Commerce Act and in the light of the command of the National Transportation Policy that the inherent advantages of each mode of transportation be recognized and preserved.

Since this Court's affirmance of a judgment, unlike the denial of a petition for a writ of certiorari, constitutes a conclusion that the judgment is correct, the

basis of affirmance should be perfectly clear. The basis of affirmance here is not clear, for there is no way of determining whether this Court agreed with the District Court's answer to the first question presented or with its answer to the second question presented or with its answers to both. The confusion thereby engendered is evident. Thus for example, *Traffic World*, the journal most widely circulated and relied upon in the transportation industry, reported this Court's decision at Page 85 of its issue of December 22, 1962 as follows:

> "A ruling of a federal district court upholding a decision of the Interstate Commerce Commission that volume rates of a freight forwarder applying on shipments ranging from 20,000 to 30,000 pounds were lawful was affirmed *per curiam* by the Supreme Court of the United States on December 17 in No. 479, National Motor Freight Traffic Association, Inc., and Rocky Mountain Motor Tariff Bureau, Inc. v. United States of America and Interstate Commerce Commission, et al.
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> "The motor carrier organizations attacked the decision of the federal district court for the District of Columbia, asserting that where forwarders did not assemble and consolidate at origin and break bulk points and distribute at destination, they were not fulfilling the definition of a forwarder contained in the interstate commerce act. The lower court had also ruled that the motor carrier organizations lacked standing to maintain the action (T.W., Oct. 13, p. 116).
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> "The court's *per curiam* decision carried a note that Justice Stewart was of the view that probable jurisdiction should be noted."

In contrast, United States Law Week reported this Court's decision at Page 3201 of its issue of December 18, 1962 as follows:

"No. 479. National Motor Freight Traffic Assn., Inc. v. U.S.

"Ruling below (USDC-DC, 205 FSupp 592):

"Motor carrier associations have no standing to seek judicial review of Interstate Commerce Commission order approving freight forwarders' published tariffs setting forth reduced rates for freight shipments of 20,000-30,000 pounds moving from Official Territory to Pacific coast. (Judgment affirmed.)"

Among this Court's great responsibilities are (1) the establishment of the principles and rules which will govern the district courts in the exercise of their jurisdiction and (2) the making of the final, authoritative and clear interpretations of federal regulatory statutes necessary to the proper administration of those statutes by regulatory agencies. We respectfully submit that in the circumstances here the summary affirmance of the judgment of the District Court falls short of the discharge of these responsibilities. Appellants therefore urge this Court to grant this petition for rehearing and set this case for briefs and oral argument. Alternatively Appellants ask this Court to clarify its *per curiam* order so as to make clear the basis upon which the judgment of the District Court was affirmed.

Respectfully submitted,

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CERTIFICATE OF GOOD FAITH

I, Bryce Rea, Jr., counsel in the above cause and a member of the bar of the Supreme Court of the United States, do hereby certify that the above Petition for Rehearing is presented in good faith and not for delay.

BRYCE REA, JR.